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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

BRIEF OF RESPONDENT KASLE STEEL CORPORATION, A MICHIGAN CORPORATION, IN OPPOSITION TO PETITION OF CITY OF DETROIT, BOARD OF ASSESSORS OF THE CITY OF DETROIT, FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1

RE. A. OPINIONS BELOW

The statement of Petitioners under the above heading which reads "The earlier opinion of Michigan State Tax Commission dated February 1, 1967, is unreported and is printed in Appendix B attached hereto" is not correct. The Opinion of the Michigan State Tax Commission which pertains to Respondent Kasle Steel Corporation was not attached to, nor was it printed in, Petitioners' Appendix B. But Respondent Kasle Steel Corporation has set out in its Appendix A (which is a part of this Brief) the Opinion of the Michigan State Tax Commission dated February 1, 1967 which was rendered by said Michigan State Tax Commission with respect to Respondent Kasle Steel Corporation and it is hereby made a part of this Brief of Respondent Kasle Steel Corporation.

RE B. JURISDICTION

It is respectfully submitted that this Court does not have jurisdiction to grant the Petition For Certiorari which was filed by the Petitioners City of Detroit and Board of Assessors of the City of Detroit in this cause. Jurisdiction of this Court in matters involving Writs of Certiorari are governed by Title 28 Section 2101 of the United States Code which provides that Petitions for Certiorari must be filed within 90 days from the date of the Order of the lower Court. It should be noted that the Order of the Michigan Supreme Court was entered on March 20, 1969 and the 90 day period should have ended no later than June 20, 1969. We are informed and verily believe that the Petition filed in this cause was not filed within the 90 day period and, therefore, should not be granted by this Court.

If this Court should determine that said Petition For Writ of Certiorari was timely filed, in that event the following Brief of Respondent Kasle Steel Corporation in Opposition to the Petition of City of Detroit, Board of Assessors of the City of Detroit For Writ of Certiorari to Michigan Court of Appeals, Division 1, should be considered by this Court.

RE C. QUESTIONS PRESENTED FOR REVIEW

Respondent Kasle Steel Corporation states that Petitioners' "Questions Presented For Review" as they have been stated by Petitioners in their "C. Questions For Review" are not correctly or properly stated nor are they under the facts in this matter as shown by the Record of Kasle Steel Corporation Questions to be reviewed, because those Questions are not competent, germane or applicable as to Respondent Kasle Steel Corporation, and because the "Opinion of Michigan Court of Appeals December 2, 1968", which appears in Petitioners' Appendix A, sets out facts and law which are applicable to the foreign produced (in Japan) steels which were purchased by Kasle Steel Corporation from the foreign producer (in Japan) and which steels were imported by said Kasle Steel Corporation from Japan into the United States, those steel purchases having been arranged and brought about by contacts and negotiations which were had by and between Kasle Steel Corporation as the purchaser from said foreign producer in Japan of said steel with the United States resident agents of the foreign steel producer which agents acted as agents for the foreign steel producer and did not act as principals or for themselves, nor did they act as agents for Kasle Steel Corporation, the Prin-

cipal being the foreign steel producer for whom the United States resident agents acted; and the correct and true facts are set out in the Record of Kasle Steel Corporation; and the law applicable to those correct and true facts is set out and stated in a part of the Opinion and Decision of the Court of Appeals of Michigan of December 2, 1968, in a part of which Opinion and Decision said Court of Appeals (Michigan Court of Appeals) stated:

> "The United States Supreme Court spoke to the issue of who is an importer in Hooven & Allison Company v. Evatt (1945), 324 US 652, 663, 664 (65 S Ct 870, 89 L ed 1252):
>
> 'When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected. It is common knowledge to lawyers and businessmen that vast quantities of merchandise are annually imported into this country by purchasers resident here, for sale or manufacture here. Sometimes the buyer completes the purchase abroad, in person, and ships to this country; sometimes, as in this case, the purchase is on unsecured credit, but more often it is under contracts by which the vendor reserves in himself or his agent or a banker a lien or title as security for payment of the purchase price on or after arrival. To say that the purchaser is any the less an importer in the one case than in the others, is to ignore the constitutional purpose and substitute form for substance. * * *
>
> 'It is enough for present purposes that the merchandise in this case was imported, and that petitioner was the efficient cause of its importation,

the purpose and effect of which was petitioner's acquisition of the merchandise for its manufacture into finished goods. We conclude that petitioner was the importer, and that the merchandise in its hands was entitled to the constitutional tax immunity, surviving delivery of the imports to it.'

"There are many factual similarities between the Hooven Case, *supra*, and these consolidated steel cases. In both instances the taxpayer placed orders with domestic corporate intermediaries for merchandise which originated in a foreign country. The price included charges for ocean freight, insurance and customs. The goods were specifically marked when they left the foreign port to identify the product for the taxpayer . . .

"In determining who is the 'efficient cause' of importation in the constitutional sense, we must look beyond matters of form to the substance of the transaction. Perhaps the most significant substantive matter which the Supreme Court emphasized in Hooven, *supra*, 661, was the fact that performance of the contract called for, and necessarily resulted in, importation of the merchandise. Appellants' contracts with the domestic intermediaries specified that the steel was to be shipped from a foreign country or was already en route directly to the appellants. Performance of these contracts then, as in Hooven, called for, and necessarily resulted in, importation. In our opinion these cases fall within the scope of the Hooven decision."

RE F. WHAT THIS CASE DOES NOT INVOLVE

Respondent Kasle Steel Corporation denies all of the statements which Petitioners have made in their Petition for Writ of Certiorari under their heading which reads "F. What This Case Does Not Involve".

Respondent States What This Case Does Involve and Show

Respondent Kasle Steel Corporation contends and has proven as shown by its Record:

(1) That Respondent Kasle Steel Corporation purchased from Fuji Iron & Steel Co., Ltd., of Tokyo, Japan, which was the principal and the steel producer in Japan, through Nichimen and Okaya, respectively, who were the United States resident agents of, and who acted as agents for, the principal Fuji Iron & Steel Co., Ltd., which was the producer in Japan of the steels which were purchased by said Kasle Steel Corporation, and that those steels were imported by Respondent Kasle Steel Corporation from Japan into the United States; and

(2) That under the Opinion and Decision of the Supreme Court of the United States in the case of *Hooven & Allison v. Evatt* (1945), 324 US 652 and the constitutional provisions contained in the Constitution of the United States of and for immunity (freedom) of and from taxation of imports from foreign countries the said foreign produced steels which were purchased and imported by Respondent Kasle Steel Corporation were immune from taxation by any state or anyone else except the United States.

RE G. REASONS FOR GRANTING THE WRIT

The alleged, by Petitioners, (a) Pending Litigation, (b) Failure to Apply Constitutional Principles to Facts Herein, (c) Constitutional Safeguards Overlooked By Court Below and (d) Restatement Urged of Import-Export Immunity Doctrine are not applicable to, nor are they germane to, nor are they competent with respect to, nor can they have any application to, the facts as shown by the Record of Respondent Kasle Steel Corporation, and none of Petitioners' "G. Reasons For Granting The Writ" apply to, can apply to, nor can they affect the legal rights of, Respondent Kasle Steel Corporation whose rights have been determined by the Michigan Court of Appeals and which determination is based upon the Record of Respondent Kasle Steel Corporation and upon the decision and holding in the *Hooven & Allison v. Evatt* case, *supra*, and none of Petitioners' assumed, speculative and unproven "G. Reasons for Granting The Writ" can be of any assistance to this Court.

BRIEF OF RESPONDENT KASLE STEEL CORPORATION, A MICHIGAN CORPORATION, IN OPPOSITION TO PETITION OF CITY OF DETROIT, BOARD OF ASSESSORS OF THE CITY OF DETROIT, WHOSE ATTORNEYS HAVE DESIGNATED SAID CITY OF DETROIT AND BOARD OF ASSESSORS OF THE CITY OF DETROIT AS PETITIONERS-PLAINTIFFS, FOR A WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS, DIVISION 1

ARGUMENT

It is elementary that the function and purpose of a Writ of Certiorari is to bring to the Court a matter in which an inferior or lower court has exceeded its jurisdiction or has not proceeded according to the essential requirements of law.

A reading of Petitioners-Plaintiffs' Petition For Writ of Certiorari seems to indicate that the obvious purpose of Petitioners' said Petition For Writ of Certiorari is to attempt to have the Supreme Court of the United States review and reverse the decision of the Michigan Court of Appeals, which decided Respondent Kasle Steel Corporation's case and also other cases so that Petitioners City of Detroit and the Board of Assessors of the City of Detroit would be free to impose ad valorem taxes (taxation) on imports of steel which had been produced in foreign countries and which had been imported into the United States and which were and are immune from taxation by the clear and specific provisions of the Constitution of the United States of America.

The Supreme Court of the United States in the case of *Hooven & Allison Company, Petitioner v. William S. Evatt, Tax Commissioner of Ohio* (1945) 324 U.S. 652-694 (65 S. Ct. 870, 89 L. ed. 1252-1293), as before stated,

clearly sets out what essential facts must exist to entitle an importer of foreign produced and imported merchandise to have immunity (freedom) from taxation with respect thereto by anyone except the United States, the constitutional provision for said immunity which is involved in this matter being contained and set out in Article I, Sec. 10, Cl 2 of the United States Constitution, and it reads as follows:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

Extended testimony and considerable other evidence which is contained in, and/or which is referred to in, the 91 pages of the transcript of the evidence and testimony and in at least 30 Exhibits which were offered in evidence by Respondent Kasle Steel Corporation on and at the Hearing of the Appeal of Respondent Kasle Steel Corporation to the Michigan State Tax Commission makes up the individual or separate Record of Respondent Kasle Steel Corporation, and that Record was before the Michigan Court of Appeals when it heard and considered (in Court of Appeals Case No. 3330) the Appeal of Respondent Kasle Steel Corporation to said Michigan Court of Appeals from the Order of the Michigan State Tax Commission which is dated February 1, 1967 and which mentions a meeting of the Michigan State Tax Commission held on the 26th day of January 1967.

Based upon Respondent Kasle Steel Corporation's separate Record and the application of the pertinent law with respect thereto and the law which is set out in the *Hooven & Allison-Evatt, supra,* case, the Michigan Court of Appeals correctly decided the appeal of Respondent Kasle Steel Corporation from, and it vacated, the said Order of said Michigan State Tax Commission, and the Michigan Court of Appeals, by its decision, held that the steels imported by Respondent Kasle Steel Corporation and other steel importers were immune from taxation by the City of Detroit and Board of Assessors of the City of Detroit.

Subsequently, the City of Detroit, et al., Plaintiffs and Appellants, and Michigan State Tax Commission, Appellant, made application to the Supreme Court of the State of Michigan for leave to appeal to that Court and for a stay of proceedings in the cases which involved the Respondents herein, but said application of Petitioners City of Detroit, Board of Assessors of the City of Detroit and State Tax Commission for leave to appeal to said Supreme Court of Michigan and also for a stay of proceedings was denied by said Supreme Court of Michigan on the 20th day of March 1969 by its Order of that date which Order reads as follows:

> "the application for leave to appeal is considered, and the same is hereby DENIED, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is DENIED, as thereby being moot."

The Petitioners for the Writ of Certiorari to the Michigan Court of Appeals are not claiming, nor is there any showing, that the holding and decision of, and in *Hooven & Allison v. Evatt* was disregarded or that it was not con-

sidered by the Michigan Court of Appeals in the Appeal of Respondent Kasle Steel Corporation to that Court, but, on the contrary, the Michigan Court of Appeals decided the Appeal of said Respondent Kasle Steel Corporation in harmony with, and in recognition of the law discussed in, the *Hooven & Allison v. Evatt* case.

Nor is there any claim by Petitioners City of Detroit and Board of Assessors of City of Detroit that no case has yet been decided by the Supreme Court of the United States which determines and holds that Respondent Kasle Steel Corporation is in law under the existing facts entitled to immunity from taxation and that therefore it is necessary for the Supreme Court of the United States to grant Certiorari and to decide such a case, but the fact is (i) that the *Hooven & Allison v. Evatt* case exists and that it has existed for almost 25 years and (ii) that the decision in that case clearly and at length considered and decided the legal point of immunity from taxation of imports, therefore there is no need for any other case or any further decision by the Supreme Court of the United States to hold or show that imports from foreign countries are immune from taxation by anyone except the United States of America.

Further, it is apparent that inasmuch as said Petitioners for Writ of Certiorari have not prevailed or succeeded in the Michigan Court of Appeals and also have not succeeded in obtaining leave to appeal the decision of the Michigan Court of Appeals to the Supreme Court of Michigan they, said Petitioners, are now attempting to get the Supreme Court of the United States (i) to disregard its decision in the *Hooven & Allison v. Evatt* case, (ii) to reopen the question of immunity from taxation of imports and (iii) to render another decision and opinion which will permit Petitioners to levy and impose ad valorem taxes upon and with respect to imports from foreign countries—

something which, as has already been shown, is contrary to said provisions of immunity from taxation which are contained in, and are a part of, the Constitution of the United States and which is also contrary to the decision of the Supreme Court of the United States in the *Hooven & Allison v. Evatt* case.

The evidence, by testimony and exhibits, which is a part of the Record which was made by Respondent Kasle Steel Corporation before the Michigan State Tax Commission and which Record was before the Michigan Court of Appeals, and which is the only Record which can be considered in the litigation and in this matter insofar as Respondent Kasle Steel Corporation is concerned, shows and establishes the facts which existed and which entitled Respondent Kasle Steel Corporation as an importer of foreign produced steel to immunity of and from taxation of the steels which were imported by it from the foreign country of Japan. In other words, Respondent Kasle Steel Corporation's proofs and its Record established, proved and showed (i) that it (Respondent Kasle Steel Corporation) fulfilled and complied with the law of and requirements in the *Hooven & Allison v. Evatt* case and (ii) also that Respondent Kasle Steel Corporation is entitled to immunity from taxation of its imports. The Record of Respondent Kasle Steel Corporation also contains and shows by testimony and also by several exhibits including some exhibits from and on behalf of Fuji Iron & Steel Co., Ltd., the Japanese producer in Japan of the steels which were imported by Respondent Kasle Steel Corporation, that said Kasle Steel Corporation was the purchaser from said Japanese producer (Fuji Iron & Steel Co., Ltd.) of the steels which were imported by Respondent Kasle Steel Corporation from Japan, and said Record of said Kasle Steel Corporation also shows, by testimony and some exhibits

which were offered in evidence by said Kasle Steel Corporation and which contain the statements that "because of historical traditions peculiar to Japan, Japanese manufacturers employ the services of a number of trading companies as their designated agents"; and the Record of Respondent Kasle Steel Corporation also shows (i) that said Fuji Iron & Steel Co., Ltd., the Japanese producer in Japan of the steels which were purchased by said Kasle Steel Corporation from said Fuji Iron & Steel Co., Ltd., was the principal in the transactions and that Nichimen and Okaya, respectively, were the resident agents in the United States of said Fuji Iron & Steel Co., Ltd. (the Japanese producer in Japan of the said steels which were imported by Kasle), and (ii) that said Kasle Steel Corporation was the efficient cause of the importation of said steels from Japan, and (iii) that said Kasle Steel Corporation purchased said steels from Fuji Iron & Steel Co., Ltd., the Japanese producer in Japan of said steels, and not from domestic based companies acting as principals. The Record of Respondent Kasle Steel Corporation, which is large and voluminous, does not support the claims and assertions of the Petitioners for said Writ of Certiorari.

The Supreme Court of the United States may be interested to know that the Michigan Court of Appeals set aside an entire day for hearing the oral arguments of the respective counsel for the respective Respondents which are named above (and who were the Appellants in the Michigan Court of Appeals in said appeals with respect to the commonly called "steel cases" which were before that Court), and also of counsel for the City of Detroit, Board of Assessors and Michigan State Tax Commission, and many of those counsel which also included counsel for Respondent Kasle Steel Corporation argued their respective appeals, and, upon said oral arguments, some of said counsel which included counsel for Respondent Kasle Steel Cor-

poration referred to the facts and to the records as established and made, and which Records were before said Michigan Court of Appeals.

It seems that the Michigan State Tax Commission, which or who is designated by Petitioners City of Detroit and Board of Assessors of the City of Detroit (Petitioners-Plaintiffs) as "Appellant", and which was represented on the Hearing before the Michigan State Tax Commission and on the oral arguments of said appeals which were heard by the Michigan Court of Appeals and also on the Application to the Supreme Court of Michigan for Leave to Appeal to that Court by the Attorney General of the State of Michigan, is not a Petitioner in the Petition of the Petitioners for the Writ of Certiorari which is now before this Court, and it may be that said Michigan State Tax Commission is not one of the applicants and Petitioners for the applied-for Writ of Certiorari, nor is the Attorney General of the State of Michigan shown in said Petition for Writ of Certiorari as attorney for said Michigan State Tax Commission or anyone else.

CONCLUSION

There is no merit to said Petition of the City of Detroit and Board of Assessors for Writ of Certiorari from the Supreme Court of the United States, and there is no need for the Supreme Court of the United States to speak further on the subject of immunity of imports from taxation because the case of *Hooven & Allison v. Evatt* has spoken clearly and at length on the subject of immunity (freedom) from taxation of imports from a foreign country where the merchandise was produced, and said decision and holding of the Michigan Court of Appeals with respect to Respondent Kasle Steel Corporation is in harmony with the

actual facts in the matter as respects respondent Kasle Steel Corporation as shown by its Record, the Michigan Court of Appeals having correctly decided, based upon the Record made by Respondent Kasle Steel Corporation, that the steels produced by the Japanese producer in Japan and which Kasle Steel Corporation purchased from that Japanese producer and which were imported by Respondent Kasle Steel Corporation into the United States were immune from ad valorem taxation by the City of Detroit and Board of Assessors of the City of Detroit.

Therefore, the Petition of Petitioners and Appellants City of Detroit and Board of Assessors of the City of Detroit for Writ of Certiorari is without legal basis and without any merit and it, said Petition of Petitioners for Writ of Certiorari, should be denied, with costs to said Kasle Steel Corporation.

Respectfully submitted,

SEYMOUR J. FRANK,
Attorney for Respondent Kasle Steel Corporation,
3327 Cadillac Tower,
Detroit, Michigan 48226.

Dated: July 7, 1969.

APPENDIX A OF RESPONDENT KASLE STEEL CORPORATION

State of Michigan

Before the Michigan State Tax Commission

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

IN RE PETITION NO. Stge. 389.01 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Kasle Steel Corporation, 4343 Wyoming Avenue, Dearborn, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 23, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. Stge. 389.0 asks the current assessment of $ -0- to be raised to $250,500 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C. L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits, etc.,

there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the undisputed true cash value of the property involved is $501,000 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $226,700. Since the proposed assessment per Petition No. Stge. 389.01 is $250,500 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

WHEREFORE, it is hereby ordered that the amount of $226,700 be placed upon the assessment roll as the true and lawful value of such property.

/s/ Robert L. Purnell, Chairman

/s/ R. Gerald Barr, Commissioner

/s/ Ward G. Dexel, Commissioner

February 1, 1967.